

Decision 05-02-035 February 24, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking to implement the provisions of
Public Utilities Code Section 761.3 enacted by
Chapter 19 of the 2001-02 Second Extraordinary
Legislative Session.

Rulemaking 02-11-039
(Filed November 21, 2002)

OPINION DENYING PETITION TO MODIFY DECISION 04-05-018

Summary

We deny as moot the unopposed petition for modification of Decision (D.) 04-05-018 filed by El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC for themselves and on behalf of other Generating Asset Owners who participated in this proceeding (all referred to as Moving Parties). The Moving Parties, in their petition of November 12, 2004, seek clarification that the Maintenance Standards enforced by the Commission in D.04-05-018 do not include certain assessment guidelines associated with those Maintenance Standards.

Rule 47

Rule 47 of the Commission's Rules of Practice and Procedure (Rules) governs petitions for modification of a prior Commission decision. As relevant here, Rule 47 requires a petitioner who was a party to the underlying proceeding to file the petition within one year of the effective date of the decision at issue, serve all other parties, and specify what changes in the decision are being sought. Any factual allegations must be supported with specific citations to the record or to matters that may be officially noticed; allegations of new or changed facts

must be supported by appropriate declaration. Petitioners have satisfied all the procedural requirements of Rule 47.

Interim Opinions

D.04-05-018 (May 6, 2004), the subject of the petition for modification, is an interim opinion in this proceeding adopting General Order (GO) 167 that implements and enforces certain standards for electric generation facilities owned by electrical corporations or located in the State of California. All of these standards have been authored and submitted to the Commission by the California Electricity Generation Facilities Standards Committee, now expired. We adopted the GO in response to legislation enacted by the California Legislature in 2002, now codified at Pub. Util. Code § 761.3.

With the adoption of D.04-05-018, the Commission began to enforce certain General Duty Standards for Operation and Maintenance and more detailed Maintenance Standards for Generators. More recently, with the adoption of D.04-12-049 (December 16, 2004), we also approved the implementation and enforcement of certain Generator Operation Standards, the incorporation of the General Duty Standards into other relevant sections of the GO (thereby deleting stand-alone General Duty Standards), and other substantive modifications of the GO.

Discussion

Petitioners seek to clarify the status of certain assessment guidelines that accompany the Maintenance Standards enforced pursuant to D.04-05-018. Petitioners point to the definition of Generator Maintenance Standards set forth in Section 2.13 of the GO and argue that the definition includes both 18 performance standards and associated assessment guidelines. This definition, Petitioners say, is contrary to the Committee's original intent that only the

performance standards should be enforced. When this issue was raised in comments on the draft of D.04-05-018, we indicated that the Committee's Resolution No. 2, which transmitted the Maintenance Standards to the Commission, made no such distinction between the standards themselves and the assessment guidelines.

Petitioners' argument was renewed during our consideration of the Operation Standards; and, in our approval of D.04-12-049, we exercised our authority under Pub. Util. Code § 761.3 and decided only to implement and enforce the standards (Operation and Maintenance) and not any of the guidelines associated with those standards. Specifically, in D.04-12-049, we indicated with respect to Operation Standards that "[e]ach Standard is enforceable, while each Guideline is not." (D.04-12-049 at p. 10.) We further indicated that "[w]e adopt the same approach for the Maintenance Standards As such, we eliminate reference in the GO to the Assessment Guidelines" (*Id.* at p. 14.) In Attachment 4 to D.04-12-049, we modified the definition of section 2.13, "Generator Maintenance Standards," to refer only to the eighteen performance standards now appended to the GO as Appendix D. This appendix further indicates that "A separate document containing recommended guidelines may be obtained from the Commission's Consumer Protection and Safety Division The guidelines are intended to assist each generating asset owner determine how it may comply with these [Maintenance Standards]."

In approving these changes to GO 167 and otherwise discussing the relationship between the standards and guidelines, D.04-12-049 makes the substantive changes that Petitioners request in their pleading. We need not do more to amply address their concerns.

Status of Proceeding

With our recent adoption of D.04-12-049 on December 16, 2004, we indicated that this proceeding should remain open for the reasons indicated in Section 10 of that decision. We see no reason to revisit that recent determination. This proceeding remains open.

Comments on the Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules. No comments were filed.

Procedural Background

Petitioners filed this petition on November 12, 2004. No protests or responses were filed.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and John E. Thorson is the assigned ALJ for this phase of the proceeding.

Findings of Fact

1. El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC for themselves and on behalf of other Generating Asset Owners who participated in this proceeding filed a petition for modification of D.04-05-018 on November 12, 2004. No protests or objections have been filed.

2. With our recent approval of D.04-12-049 on December 16, 2004, we have sufficiently addressed Petitioners' concerns about the enforceability of assessment guidelines, as they pertain to the Maintenance Standards. In D.04-12-049, we indicated with respect to Operation Standards that "[e]ach

Standard is enforceable, while each Guideline is not.” (D.04-12-049 at p. 10.) We further indicated that “[w]e adopt the same approach for the Maintenance Standards As such, we eliminate reference in the GO to the Assessment Guidelines” (*Id.* at p. 14.)

3. In Attachment 4 to D.04-12-049, we modified the definition of section 2.13, “Generator Maintenance Standards,” to refer only to the eighteen performance standards now appended to the GO as Appendix D. This appendix further indicates that “A separate document containing recommended guidelines may be obtained from the Commission’s Consumer Protection and Safety Division The guidelines are intended to assist each generating asset owner determine how it may comply with these [Maintenance Standards].”

Conclusions of Law

1. The petition meets the procedural requirements of Rule 47.
2. D.04-12-049 indicates that the Commission will enforce only the Maintenance and Operation Standards. As indicated in that decision (page 11), “[w]e adopt the Guidelines as guides, but do not adopt them as Standards.”
3. Petitioners’ requested relief in their petition is now moot because D.04-12-049 provides the relief they seek.
4. This proceeding should remain open for the reasons stated in D.04-12-049.

O R D E R

IT IS ORDERED that:

1. The November 12, 2004, Petition for Modification of Decision (D.) 04-05-018 is denied.
2. Rulemaking 02-11-039 remains open.

This order is effective today.

Dated February 24, 2005, at San Francisco, California.

MICHAEL R. PEEVEY

President

GEOFFREY F. BROWN

SUSAN P. KENNEDY

DIAN M. GRUENEICH

Commissioners